Exhibit P

PHARMACEUTICAL SOCIETY OF THE STATE OF NEW YORK
Pine West Plaza IV • Washington Avenue Ext. • Albany, New York 12205
518-869-6595

TO: Negotiating Team

FROM: Elizabeth Lasky

DATE: May 23, 1990

RE: Personal & confidential notes and thoughts on negotiations

Note that I made a greater effort to record DSS statements than PSSNY statements, thinking that the purpose of note taking was to help us know where DSS is coming from. Please make allowances for an occasional human error, though I believe these to be accurate.

As you read the notes from the first two meetings, you may come to the same conclusion I did: That since the first meeting Cathers talked with HCFA, and HCFA talked tough, maybe even threatening NYS with a federal disallowance. There are many statements here about HCFA and, I think, some fear. NYS officials may feel particularly vulnerable in this budget crisis.

It may well be that we can accept "budget neutral" only in terms of AWP: AWP + $2.60 + $ .35 for AUL differential. Incidentally, the $2.60 fee is now the very lowest in the nation. If HCFA can be asked to "buy" AWP at all, maybe the best test is in a state with such a low fee. But will the PSSNY board allow us to risk such a low offer in order to save AWP? What about the downside risk of a low fee?

On our next round we should work the figures more on total reimbursement, comparing NYS with other states and take into account what other third party plans are paying NYS pharmacists. (I think Barry Goldstein may be onto this.)

I await further instructions on presenting to the PSSNY board the offer of AWP -9% + UL's + $3.90 for 1990 until survey results are available for budget negotiations in 1991.

Should the negotiating committee caucus prior to any meeting with the board?

cc: D.C. Huffman
A. Taubman
E. Kelly Considine

Notes from our first negotiating meeting:

PSSNY:

What is the average Rx price in Medicaid?
HCFA said only that the state must set a "new benchmark for EAC." Do you have anything from HCFA that we have not seen?
Any settlement is subject to HCFA approval. If the plan is rejected, we expect to be back to the negotiating table.
What is the average ingredient cost per Rx?
When you reimbursed us for the difference, which AUL/AWP prices did you use? Date of service pricing?
What was the total amount of retroactive reimbursement? (We'll use $13 million for April 1988 to September 1989)
Did anyone calculate the aggregate value of the bucket for AUL drugs (HCFA upper limits x utilization)?
Eliminate the hearing by giving us CPI or some method to protect against inflation.

DSS:

HCFA will accept almost anything.
Anything we agree to here is subject to the approval of three commissioners and the Division of the Budget.
We agree you need a realistic fee. We need a realistic estimate of acquisition cost. We want to survey on prices. (PSSNY: We insist on a survey for the burden rate. It must be done by an objective, impartial auditing firm.)
Looking for a way to document to factually substantiate our state plan to satisfy HCFA.

We could agree to an interim plan pending the results of surveys.

Ingredient cost + fee
(AWP -10%)

(Trend factor on drug cost + fee reflective of burden rate)

There are three buckets as defined by HCFA. We cannot overfill any of them.

These are:

Fee bucket	AUL generics bucket	"other drugs"

Falzano:

In 1989 30 million Rx's (Includes OTC)
Average Rx Cost in 1988 was 17.65 (includes fee)
(Want to confirm this with another set of notes)

Notes from second negotiating meeting 5-22-90

PSSNY:
What was average Rx cost in Medicaid for 1989 (fee + ingredient)?

DSS:
$426,746,885.17 total prescription ingredient expenditures
25,237,932 Rx's (OTC's not included)

= $17.04?
= $16.90?

PSSNY:
How much was paid in fees?

Falzano:
25,237,932 x $2.60

PSSNY:
Where does the system take the savings from usual and customary ('lower than' billings) from the fee or from ingredient cost?
We have informal survey data from one chain that states approximately 25% of their Medicaid billing is lower than AWP + $2.60.

DSS:
Substantiate that.

PSSNY:
We do not have permission to release the name of the chain. Question remains on where this appears.

Falzano:
We always pay the $2.60 fee.

PSSNY:
Then it is in your system as a reduction from AWP.

Falzano:
We do not know what the number is. We have never looked for it.

PSSNY:
We shouldn't be asked to substantiate this. The data is yours. You have the data.
Brankman estimated generic reimbursement to be 10% of claims. Our figure is closer to 25%. What is it?

Our research shows us that the average Rx price in 1978 Medicaid was $7.05. Today it appears to be $19.35. Replenishment of inventory is only one factor. Western New York average Rx cost is $19.85; in New York City area it is approximately $26.75. There are immense regional differences in New York.

DSS:

B.G.:

For strategic reasons we would be more comfortable presenting AWP minus plus a fee.

Falzano:

PSSNY's evidence from HCFA regs on flexibility refers only to upper limits program.

B.G.:

Why should NYS go down the road that could lead us into litigation with HCFA? Will PSSNY indemnify the state?
If the Feds sue one state, they're ready to sue another.

Cathers:

The Feds are stringent on the buckets. If we tried to retain AWP we could be locked into a 2 1/2 year battle with the Feds.
If we could give you $7.50 + AWP and get this thing over and done with we would, but we cannot. We need AWP less a percentage from a practical standpoint to move this along.

Falzano:

Substantiate that 25% figure on usual and customary.
75% of other drug claims are paid at $2.60 plus AWP.
The dispensing fee is always $2.60.
It is true some chains submit at less than AWP.

Taubman:

What exactly is the impact of "lower than"?
It is off AWP, isn't it?

Falzano:

It would come off the cost, not the fee. But our audit experience is that usual + customary billing is not occurring.
Claims from chains are approximately 50% of all billing.
HCFA views usual + customary as a separate class of payment, separate from ingredient cost and fee. HCFA seems to want a discount off AWP.

B.G.:
Can't the prescription department be considered a loss leader?
Are chains in a different position than independents?
I would think the volume purchases in chain Rx departments would allow them to tolerate a lower reimbursement.

Falzano:
Chains purchase for less because they purchase in quantities.
All other programs are watching what is happening to Medicaid's fee in this state. They feel they have to factor in an increase in their fees.

Cathers:
The Feds are pushing us to surveys on both AAC + burden rate.
If we're looking for an interim program we should consider AWP - .2% or AWP - 1% + fee + CPI + all UL's at the federal limit.

DSS took a break here and returned to propose:

AWP - 9% + $3.90 for 1 year
AUL at upper limit each time for every drug.
Then we can do a survey and have the results ready for the next budget.

PSSNY:
Justify the 9%

DSS:
It's a number we can work with.

B.G.:
Its budget neutral.

E.K.:
How is it budget neutral? Please define budget neutral.

Falzano:
Upon information and belief it is budget neutral.

B.G.:
Can we agree to the concept of "budget neutral?"

Falzano:
Increase in fee is offset by discount off AWP.

Navarra:
Depends on your definition of budget neutral.

Falzano:
The formula of AWP - 9% + $3.90 would not change the total reimbursement.

R.M.:
Now you are not looking at the buckets any longer. Now you are talking about total reimbursement.

Falzano:
We did not factor in lower of. We used mathematical calculations to define neutrality.

Cathers:
We could get hit with a federal disallowance. We cannot go to the Feds with full AWP.

PSSNY:
What goes into the dispensing fee pot?
- AUL savings
- AWP minus %
- Savings on usual + customary.

Falzano:
We're willing to go back to find out where the savings on usual + customary actually is figured - in the fee side or in the ingredient side.

Cathers:
We agree conceptually:

Recap

AUL's at SUL's (specific upper limits)
We need to discount AWP
You need an increase in fee
We both agree on surveys
CPI onto the fee? State Finance does not like indexes.